## UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TYLER DIVISION

BLUE SPIKE, LLC,

Plaintiff,

v.

TEXAS INSTRUMENTS, INC., et al..

Defendants.

CASE NO. 6:12-cv-499-RWS-CMC LEAD CASE Jury Trial Demanded

## EMERGENCY OPPOSED MOTION TO MODIFY THE SCHEDULING ORDER

Plaintiff Blue Spike, LLC ("Blue Spike") moves the court to modify the scheduling order (Dkt. No. 1332) ("Order"). The current deadline for expert reports rebuttals is April 21, 2015. Blue Spike seeks an extension on all expert rebuttal reports until May 21, 2015.

| EVENT                   | CURRENT<br>DEADLINE | PROPOSED<br>DEADLINE |
|-------------------------|---------------------|----------------------|
| Expert Rebuttal Reports | April 21, 2015      | May 21, 2015         |

Good cause exists for this extension. As detailed in Blue Spike's Motion to Strike the Expert Report of Dr. Quackenbush provided by Audible Magic (Dkt. No 1937), Dr. Quackenbush's report is over 3600 pages long. The expert report is simply too long to parse and respond to within the confines of the current schedule. Blue Spike is already prejudiced by Audible Magic's

 $<sup>^{</sup>m 1}$  The agreed motion requesting the current deadline was approved by Special Master McGovern but not entered into the docket.

excessively long document. Requiring Blue Spike to respond to 3676 pages by the current deadline would only compound the prejudice to Blue Spike.

Blue Spike is forced to retain another expert to respond to the 3676-page invalidity report, in addition to the other expert report by Dr. Strawn. Specifically, Blue Spike plans to disclose Dr. Yannis Papakonstantinou. Blue Spike is currently in the process of assessing Dr. Papakonstantinou's expert disclosure requirements in order to ascertain if the defendants will move to strike him. Since the defendants are relying upon "secret prior art" that has been marked highly confidential and attorneys' eyes only, Blue Spike must disclose Dr. Papakonstantinou under the protective order.

Additionally, our small firm representing Blue Spike unexpectedly lost a key associate in this litigation, Peter Brasher, without notice. As a result of Mr. Brasher's abrupt departure, our firm suffered a calendaring and distribution issue with respect to Audible Magic's report for \$6 million in counterclaim damages. This oversight was first brought to the firm's attention last week after a discussion with Special Master McGovern. Blue Spike needs to respond to this report. That Blue Spike has not yet responded is our firm's fault, not Blue Spike's.

Blue Spike's requested deadline of May 21, 2015, in no way will impact the Order's pretrial conference, set for October 5, 2015.<sup>2</sup>

 $<sup>^{2}</sup>$  This proposed deadline is also two weeks prior to the current June 5, 2015 deadline for dispositive motions.

For the above stated reasons, Blue Spike, LLC respectfully requests the Court modify the scheduling order as shown above.

Respectfully submitted,

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Counsel for Blue Spike, LLC

## CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email.

/s/ Randall T. Garteiser

## CERTIFICATE OF CONFERENCE

I certify that on behalf of Blue Spike, LLC, I met and conferred with counsel for Defendant Audible Magic on April 21, 2015.

/s/Randall T. Garteiser